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has been put to great costs and expenses: *Cook* v. *Cook*, 100 Mass. 194.

By special damage in such a case is meant pecuniary loss, but it is well settled that the term may also include the loss of substantial hospitality of friends: *Moore* v. *Meagher*, 1 Taunt. 42; *Williams* v. *Hill*, 19 Wend. 306.

Illustrative examples are given by the text writers in great numbers, among which are loss of marriage, loss of profitable employment or of emoluments, profits or customers, and it was very early settled that a charge of incontinence against an unmarried female, *whereby she lost her marriage*, was actionable by reason of the special damage alleged and proved: *Davis* v. *Gardiner*, 4 Co. 16 b., pl. 11: *Reston* v. *Pomfreicht*, Cro. Eliz. 639.

Doubt upon that subject cannot be entertained, but the special damage must be alleged in the declaration and proved, and it is not sufficient to allege that the plaintiff "has been damaged and injured in her name and fame," which is alleged in that regard in the case before the court: *Hartley* v. *Herring*, 8 Term 133: Addison on Torts 805; *Beach* v. *Ranney*, 2 Hill 309.

Tested by these considerations, it is clear that the decision of the court below, that the declaration is bad in substance, is correct.

Judgment affirmed.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME COURT OF ILLINOIS.[2]
SUPREME COURT OF WISCONSIN.[3]

ACTION. See *Foreign Judgment.*

Judgment—Interference by Real party in Interest though not nominally on the Record—Statute of Limitations.—The *real* defendant who pays a judgment against a nominal party, afterwards vacated, may recover *in his own name* the money so paid: *Mann et al.* v. *The Ætna Insurance Co.*, 38 Wis.

Plaintiffs covenanted with A., S. & Co., for value, to discharge all indebtedness and liabilities of the latter firm, indemnify it against an

[1] From J. W. Wallace, Esq., Reporter; to appear in vol. 22 of his Reports.
[2] From Hon. N. L. Freeman, Reporter; to appear in vol. 69 Illinois Reports.
[3] From Hon. O. M. Conover, Reporter; to appear in 38 Wisconsin Reports.

action by the present defendant against it then pending in New York, and pay any judgment which should be rendered against it therein. On a judgment rendered against A., S. & Co. in that action, this defendant recovered a judgment in Wisconsin against that firm, which was paid by plaintiffs, but afterwards vacated on their motion, for the reason that the New York judgment had been reversed. *Held*, that such payment by plaintiffs was not a *voluntary* one, but one to which they were *bound by their covenant;* and they may recover from this defendant the amount so paid: *Id.*

This action for such recovery was commenced more than six years after payment by plaintiffs of said Wisconsin judgment, but less than six years after the reversal of the New York judgment. *Held*, that it was *not barred* by the statute, the cause of action not having accrued until such reversal: *Id.*

ADMIRALTY.

Submission of Litigated Matters to Arbitration—Prize.—Captors (Admiral Farragut and others) having filed a libel in the admiralty for prizes taken below New Orleans in April 1862, they and the government agreed to refer the cause to the "final determination and award" of A., B., and C., "the award of whom," said the agreement of reference, "shall be *final* upon all questions of *law* and fact involved, said award to be entered as a rule and decree of court in said case, with the right also of either party to appeal to the Supreme Court of the United States, *as from other decrees or judgments in prize cases.*" The arbitrators made an award, finding certain matters wholly or chiefly of fact, and also certain conclusions of law, and their award was, after exceptions to it, made a decree of the court where the libel was filed. An appeal was taken to the Supreme Court.

Held as principles of law applicable to the case:—

1. That there was nothing in the nature of the admiralty jurisdiction or of an appeal in admiralty, which prevented parties in the Court of Admiralty, whether sitting in prize or as an instance court, from submitting their case by rule of court to arbitration.

2. That the award in the present case was to be construed here and its effect determined by the same general principles which would govern it in a court of common law or of equity.

3. That notwithstanding the expression in the agreement of submission, that all questions of *law* in the case were to be concluded by the award, the agreement was in this respect no more than a submission of all matters involved in the suit.

4. That accordingly where the award found facts, it was conclusive; where it found or announced concrete propositions of law, unmixed with facts, its mistake, if one was made, could have been corrected in the court below, and could be corrected here; that where a proposition was one of mixed law and fact, in which the error of law, if there was any, could not be distinctly shown, the parties must abide by the award.

5. That the award was also liable, like any other award, to be set aside in the court below, for such reasons as would be sufficient in other courts; as for exceeding the power conferred by the submission, for manifest mistake of law, for fraud, and for all other reasons on which awards are set aside in other courts of law or chancery: *United States* v. *Farragut*, 22 Wall.

AGENT.

Cannot act for both Buyer and Seller.—Where an agent employed to sell property, sells the same to a purchaser for whom he is acting as agent in effecting the purchase, the seller, in equity, may avoid the contract: *Fish* v. *Leser*, 69 Ills.

ARBITRATION AND AWARD. See *Admiralty.*

BANKRUPTCY. See *Landlord and Tenant; Partnership.*

Redemption of Land by Bankrupt after Sale for Taxes—Owner.—Under a statute which enacts that the "owner," may within a time named redeem land sold for taxes, a redemption may properly be made by a person who has been decreed a bankrupt, the lands having been his. In the case here before the court there had as yet been no appointment of an assignee, nor assignment and conveyance to such person, as provided for in the fourteenth section of the Bankrupt Act of 1867; and the redemption was made between the date of the decree and of such appointment: *Hampton* v. *Rouse*, 22 Wall.

A charge that a person who had been decreed a bankrupt on his own application had by *such decree* ceased to be owner and had lost the right to redeem, *Held* to be erroneous; there having been evidence tending to show a redemption by such a person: *Id.*

BILLS AND NOTES.

Promissory Note—Defence allowed where Plaintiff sues on Note as Trustee for another.—Where the plaintiff in an action on a promissory note is a mere trustee for another, the maker may avail himself of any defence which he might set up against the real owner if the action had been brought in his name: *Belohradsky* v. *Kuhn*, 69 Ills.

CONSTITUTIONAL LAW.

Release of Claim by State—Restriction on Legislative Powers.—The provision of the Constitution of Missouri, which ordains, "The General Assembly shall have no power, for any purpose whatever, to release the lien held by the state upon any railroad," a provision having reference to the statutory liens held by the state on different railroads for the credit of the state, lent to them by the issue of state bonds, the principal and interest of which the railroad companies were to pay—was not meant, in case of a failure by the railroad companies, to prevent the state from making a compromise with any railroad company of any debt due to it or to become due; and on the compromise being effected to release the lien: *Woodson* v. *Murdock et al.*, 22 Wall.

This view of the meaning of the clause is not altered by reading it in the light of the constitutional ordinance, "for the payment of state and railroad indebtedness," adopted at the same time as the state constitution, and as part of it, which ordinance, after providing for a sale by the state of any railroad indebted to it, and for the possible case of a purchase by the state of the road, provides further for a sale of the road after the state has so become owner, ordaining in such case, "That no sale * * * shall be made without reserving a lien upon the property and franchises thus sold * * * *for all sums remaining due.*" This expression is to be regarded not as having reference to what the railroad company

originally owed the state, that is to say, reference to the debt for which the road was first sold, but to any portion of the purchase-money which may remain unpaid upon a second sale; a sale by the state, after *she* has become owner: *Id.*

The provision in the same constitution, "That no law enacted by the General Assembly shall relate to more than one subject, and that shall be expressed in its title," is not violated by any act having various details, provided they all relate to one general subject: *Id.*

Hence, where an act was entitled, "An act for the sale of the Pacific Railroad, and to foreclose the state's lien thereon, and to amend its charter," *held*, that after certain sections providing for the sale, a section providing that in certain contingencies no sale should be made, was not a violation of the constitutional provision: *Id.*

CORPORATION.

Damages—Liability for Malicious Assault by its Employee.—The validity of ch. 273 of 1874, so far as it prescribes maximum tolls for the carriage of persons and property over the railways of this state, is no longer an open question in this court: *Hinckley* v. *The C., M. & St. P. Railway Co.*, 38 Wis.

If, in removing plaintiff from defendant's train for his refusal to pay a greater rate of toll than the maximum prescribed by said act, defendant's servants, in addition to the degree of force required for such removal, made a malicious and aggravated assault on plaintiff, which was either authorized or approved by defendant, it was a case for *exemplary* damages: *Id.*

Such an assault was alleged in the complaint and denied in the answer. The jury found plaintiff's *actual* damages to be $600; but the verdict and judgment in his favor was for $1000 damages. On defendant's appeal, the bill of exceptions failed to set out all the evidence. *Held*, that the verdict must be *presumed* to have been warranted by the evidence: *Id.*

DAMAGES. See *Corporations.*

Vindictive—As against Municipal Corporations.—Municipal corporations are not liable to vindictive or exemplary damages for personal injuries growing out of mere neglect to keep a sidewalk in a safe condition. In order to justify such damages, the negligence of the authorities must be so gross as to be wilful: *City of Chicago* v. *Kelly*, 69 Ills.

Trespass—Vindictive Damages.—Where a person, on the commission of a wrongful act, becomes liable only in consequence of his subsequent approval or sanction of it, he will be liable only for the real injury sustained, and will not be subject to vindictive damages: *Grund* v. *Van Vleck*, 69 Ills.

DEED.

Delivery in Escrow—Statute of Frauds.—The conditions upon which an *escrow* was to be delivered to the grantee therein named, may rest in parol and be proved by parol: *Campbell* v. *Thomas*, 38 Wis.

When the person named as grantor still retains the right of control over the deed, notwithstanding the deposit thereof with a third person, it is *not an escrow*: *Id.*

A deed deposited by the person named therein as grantor, with a third person, with instructions to deliver it to the person named as grantee, is not an *escrow* unless there is a valid contract of sale and purchase between such grantor and grantee: *Id.*

In pursuance of the terms of an oral agreement for the sale and purchase of land, C. paid T. a small sum, on account of purchase-money, and T. signed, sealed and acknowledged a deed of the land to C. (which purported, by its own terms, to be for a consideration of $3000), and delivered it to H. with directions to deliver it to C. if the latter should, on the second day thereafter, deposit with H. his two notes for a certain sum (part of the purchase-price), secured by a mortgage on the same land, and pay to H for T.'s use the balance of the price. Within the time limited, C. offered to H. the notes, mortgage and money required by the oral agreement; but H., by T.'s instructions, refused to deliver to C. the deed, and T. at the same time tendered back to C. the money already paid, and left it with H. for C. upon the refusal of the latter to receive it. In an action by C. to compel a delivery of the deed to him by H.: *Held,* (1) That the oral agreement was void by the Statute of Frauds. (2) That if the deed deposited with H. had contained the *whole* contract, it would have been a sufficient memorandum in writing to answer the requirements of the statute. (3) That if the mortgage had been drawn and signed by C. at the same time that the deed was signed by T., and deposited with the deed, the two instruments construed together as a single contract, would probably have been a sufficient compliance with the statute. (4) That as there was no such contemporaneous execution or deposit of the mortgage, and as the deed does not show a contract by which C. was to give his notes and a mortgage for a part of the purchase-price (which is the contract alleged by him, and upon which alone he could maintain the action), there was no valid contract between the parties, the deed was not an *escrow*, and it remained subject, in H.'s hands, to the control of T.: *Id.*

EQUITY. See *Joint Tenants.*

Practice—Parties to Bill.—In general, one who will be directly affected by a decree in equity, is a necessary party to the suit; and this rule is departed from only when the parties are so numerous that compliance with it would be impossible or inconvenient. Where the grounds of action averred against several defendants to a suit in equity arise out of the same transaction or a series of transactions forming one course of dealing and all tending to one end, the bill is not multifarious: *Supervisors of Douglass Co.* v. *Walbridge and others*, 38 Wis.

ESTOPPEL.

Holding another out as the Owner of Party's Property.—Where the owner of property holds out another, or allows him to appear as the owner of, or as having full power of disposition over the property, and innocent parties are thus led into dealing with such apparent owner or person having the apparent power of disposition, they will be protected: *Anderson* v. *Armistead*, 69 Ills.

FACTOR.

Fiduciary Character—Liability for Misuse of Proceeds of Sales.—

A commission merchant who sells goods for his consignors, even though he guaranty the payment of the price, receives the proceeds of the sales in a *fiduciary* capacity, and is liable to arrest in an action therefor, unless he has been authorized by his consignor to use such proceeds in his own business: *Williams Mower & Reaper Co.* v. *Raynor*, 38 Wis.

FOREIGN JUDGMENT.

Judgment founded on Judgment in another State—Reversal of the latter—Recovery of Money paid on former—Laches.—Where a New York judgment was reversed after a judgment founded thereon had been rendered in a court of Wisconsin, *quære*, whether it was necessary to have the latter judgment set aside before moneys paid upon it could be recovered of the plaintiff therein: *Ætna Insurance Co.* v. *Aldrich and others*, 38 Wis.

If the order setting such judgment aside was unnecessary, it was harmless, and affords the judgment plaintiff no ground of complaint: *Id*

As a general rule, none but *parties* to a judgment can have it set aside: *Id.*

But where the *nominal* party to an action is not the *real* party in interest, the latter is treated as having a standing in court, and may have control of the action: *Id*

While the New York action against A., S. & Co. was pending, M. Bros., for value, covenanted with that firm to discharge all its indebtedness and liability, and indemnify it against said action and pay any judgment which should be rendered against it therein. After a judgment against A., S. & Co. in said action had been affirmed by the New York Court of Appeals, the cause was removed by writ of error to the Supreme Court of the United States, but no *supersedeas* bond given, and that court reversed the judgment. While the cause was pending in the Federal court, judgment against A., S. & Co. was recovered in Wisconsin upon the New York judgment, and was *paid* by M. Bros. *Held*, that the latter were the real parties in interest as defendants, and entitled to a hearing on their application to vacate the Wisconsin judgment: *Packard* v. *Smith*, 9 Wis. 184, distinguished: *Id.*

A party is not chargeable with *laches* for failing to give a *supersedeas* bond on suing out a writ of error; nor in this case can M. Bros be charged with *laches* for neglecting to obtain a stay of proceedings in the Wisconsin action against A., S. & Co.; especially as the granting of such a stay rests largely in the discretion of the court: *Id.*

FORMER ADJUDICATION.

Judgment—Against Privies in Interest.—Where a party, whose goods were insured in the name of another, with whom they were stored, after a loss, agreed with the party insuring, that suit should be brought in his name for the use of the owner, which was done, and prosecuted in good faith, but on a trial the action was defeated without fault of the nominal plaintiff, it was *Held*, that the owner of the goods, being a privy in interest, was concluded by the judgment, and could not re-litigate the matter in a suit against the party who had made the insurance, for an alleged breach of his agreement to insure: *Cole* v. *Favorite*, 69 Ills.

Husband and Wife.

Wife may charge her Separate Estate to pay Husband's Debts.—It is settled doctrine that a married woman may charge her separate property for the payment of her husband's debt, by any instrument in writing in which she in terms plainly shows her purpose so to charge it; she describing the property specifically and executing the instrument of charge in the manner required by law: *Stephen* v. *Beale et ux.*, 22 Wall.

Infant.

Contract with—Relinquishment by Parent of right to Earnings.—A minor, possessing the other legal qualifications, may, with the assent of his father, contract with a school board in this state to teach a school: *Monaghan* v. *School District No.* 1, 38 Wis.

The school law (ch. 101, Laws of 1872), seems to contemplate that the contract in such a case shall be made with the teacher, and not with the father: *Id.*

A father, by agreement with his minor child, may relinquish to the latter the right which he would otherwise have to his services, and may authorize those who employ him to pay him his wages, and will then have no right to demand those wages either from the employer or from the child: *Id.*

Plaintiff was present and assenting when his minor daughter entered into a contract in writing with a school board, as teacher, which was signed by her in her own name, and not by him. In the absence of other proof of any intention on his part to relinquish his right to her wages: *Held*, that he may maintain an action against the board for such (unpaid) wages: *Id.*

Insurance.

Premises vacated without Notice according to Condition.—Where a policy of insurance contained a condition that the same should be void in case the premises should become vacated, by the removal of the owner or occupant, for more than thirty days, without notice to the company, and its consent endorsed on the policy, and the premises were vacated January 12th thereafter, and so remained until February 13th, when they were destroyed by fire: *Held*, that the assured could not recover for the loss: *Hartford Fire Ins. Co.* v. *Webster*, 69 Ills.

Joint Tenants.

Mortgage by One—Parties to Bill to Redeem—Where one of four joint tenants makes a deed of trust (a mortgage) of land conveyed to the four—the deed of trust purporting to convey the *whole* estate—it is not necessary, on a bill filed to have the land sold under the deed of trust (in other words, to foreclose the mortgage), to make the three who do not convey parties defendant to the bill: *Stephen* v. *Beall et ux*, 22 Wall.

Judgment. See *Action; Foreign Judgment.*

Laches. See *Foreign Judgment; Trust.*

Landlord and Tenant.

Lien of Landlord for Rent before Levy—Bankruptcy.—Under the Landlord and Tenant Act of Illinois, which enacts in its seventh section

that: "In all cases of distress for rent it shall be lawful for the landlord, by himself, his agent, or attorney, to *seize for rent any personal property of his tenant* that may be found in the county where such tenant shall reside, and in no case shall the property of any other person, although the same may be found on the premises, be liable to seizure for rent due from such tenant." And enacts in its eighth section that: "Every landlord shall have a *lien* upon the crops growing or grown upon the demised premises in any year for rent that shall accrue for such year." A landlord has no lien upon the personal property of his tenant prior to an actual levy of distress: *Morgan* v. *Campbell, Assignee*, 22 Wall.

If proceedings of bankruptcy are begun by other persons against his tenant before such warrant of distress be actually levied, the subsequent assignment in bankruptcy, which assignment the fourteenth section of the Bankrupt Act declares "shall relate back to the commencement of said proceedings," and "by operation of law" vest in the assignee, the title to all the bankrupt's property and estate, "although the same is then attached on mesne process as the property of the debtor," will vest the personal property of the tenant in the assignee, to the exclusion of the landlord's right to levy on it: *Id.*

It was the object of this fourteenth section to prevent any particular creditor asserting any lien but such as existed when the petition in bankruptcy was filed: *Id.*

LIMITATIONS, STATUTE OF. See *Action.*

MUNICIPAL CORPORATION. See *Damages; Railroad.*

NEGLIGENCE. See *Railroad.*

Liability of Railroad Company for Injury to its Servants.—While it is true that a common employer is not responsible to a servant for an injury caused by the negligence of his fellow-servant engaged in the same line of employment, yet it is the duty of a railway company, as employer, to provide safe structures, competent employees and engines, and all appliances necessary to the safety of the employed, and to adopt such rules and regulations for running its trains as will insure safety, and, having adopted them, to conform to them, or be responsible for consequences resulting from a departure from them: *C. & N. W. Railway W. Co.* v. *Taylor*, 69 Ill.

Injury from Street Car and Plaintiff Negligent.—Where the plaintiff is driving with his buggy upon a horse railway track when a car is approaching from the opposite direction toward him, at a short distance and in plain sight, it is his duty to turn off the track to avoid a collision, and if he does not do so, through negligence or wilfulness, and a collision ensues, he cannot recover against the railway company, even if the latter was also in fault, unless the company or its servants wilfully causes the injury, or are guilty of such negligence or reckless conduct as that the plaintiff's is slight when compared with it: *Chicago W. D. Railway Co.* v. *Bert*, 69 Ill.

PARTNERSHIP.

Payment of Individual Debt—Bankruptcy of one Partner.—The assignee in bankruptcy of the estate of an individual partner of a debtor

copartnership, cannot maintain a suit to recover back money previously paid to a creditor of the copartnership, upon the ground that the money was paid to such creditor in fraud of the other creditors of the firm, and in fraud of the provisions of the Bankrupt Act. The suit should be by the assignee of the partnership: *Amsinck* v. *Bean, Assignee,* 22 Wall.

The mere fact that one partner of a firm composed of two partners, after a stoppage of payment, suffered the other, who had put in two-thirds of the capital, and who was in addition a large creditor of the partnership for money lent, to manage the partnership assets apparently as if they had been his own, proposing to creditors a compromise at seventy cents on the dollar, taking the partnership stock, transacting business in his own name, buying some new stock, selling old and new, and mingling the funds—though keeping separate accounts—does not, of itself dissolve the partnership, and vest such acting partner with the partnership property in such way as that on a decree of bankruptcy against him *individually*, the partnership assets pass to his assignee in bankruptcy: *Id.*

PAYMENT.

Accepting void Conveyance as a Payment in Ignorance of the Facts.—Where a party accepts a deed in payment of a debt, and receipts the same, in ignorance of the fact that the deed is a nullity, there being no such property in existence as it assumes to convey, this will be no payment, and he will not be concluded by his receipt: *Anderson* v. *Armstead,* 69 Ill.

RAILROAD. See *Corporation; Negligence.*

Approval by Electors of County Aid—Modification of Contract.—Where a proposition for county aid to a railroad upon stipulated conditions has been submitted to the electors of the county and approved by their vote (under acts like ch. 326, P. & L. Laws of 1870), such conditions cannot afterwards be essentially modified by any agreement between the railroad company and the board of county supervisors: *Supervisors of Douglas Co.* v. *Walbridge et al.,* 38 Wis.

Negligence.—Where a boy, aged about seven years, was injured while attempting to climb up the ladder of a freight car while in motion along a public street in a city, and it appeared that the train was not being run at an unlawful rate of speed, it moving not faster than four miles an hour, that the train was properly manned, with every employee at his station, and that the train was under perfect control, and being run with the greatest care and caution, it was *held*, the company was not liable: *C., B. & Q. Railroad Co.* v. *Stumps,* 69 Ill.

Action for Death of Child—Negligence of Child or of Plaintiff.—In an action under the statute for injuries to the person of plaintiff's intestate, causing his death (R. S. ch. 135, secs. 12, 13), although the recovery must be confined to damages of a strictly *pecuniary* kind, yet the jury are not held to any fixed and precise rules in estimating the amount of damages (within the statutory limit on that subject), but may compensate *all* pecuniary injuries, from whatever source they may proceed: *Ewen, Adm'r,* v. *C. & N. W. Railway Co.,* 38 Wis.

Where the damages in such an action go to the parents of the deceased, evidence of their health and estate, and of other facts bearing on the

probabilities of their needing the services of the deceased, or of their suffering any actual pecuniary loss from his death, may be submitted to the jury: *Id.*

Thus, where the deceased was a boy eight years old, evidence was competent to show that his mother was a widow, and in poor health; that she had but little means, and was mainly supported by her friends; and that she drew a pension of two dollars per month, which was cut off by the death of the child: *Id.*

It was not necessary, in such a case, to allege specially, in the complaint, the loss of such pension by the mother of the deceased in consequence of his death, in order to render evidence of the fact admissible: *Id.*

In such an action, where deceased was killed by a locomotive engine in crossing defendant's railway track, if it were clear from the undisputed facts, that the boy himself, considering his age and intelligence, did not exercise proper care in crossing the track, or that, in view of his tender years, his mother was guilty of contributory negligence in permitting him to go alone, on the errand upon which he was sent across such track, the trial court might determine, as a proposition of law, that there could be no recovery; *Id*

But where the circumstances leave the inference of negligence in doubt, and the court is unable to say that upon the most favorable construction for the plaintiff, which can be given to his evidence, there is nothing to submit to the jury, a nonsuit is improper: *Id.*

SLANDER.

Words actionable per se.—The complainant in slander avers that the parties, having been partners in business, agreed to terminate the partnership, but were unable to settle their partnership affairs; that they submitted the difference arising on their final accounting to arbitrators, who made a certain award, which is recited; that, notwithstanding such award, defendant continues to give out that plaintiff greatly cheated him; and that, at a specified time and place, in the hearing of certain persons named, defendant said of and concerning plaintiff: "These books (meaning the firm books of the parties) must be in court. For he is a swindler and thief, and stole eight thousand dollars from me." *Held*, on demurrer, 1. That the words recited, unqualified by averments, are actionable *per se*, as they charge a crime. 2. That if it appeared from the complaint that the words were spoken and understood merely as charging that plaintiff had made false entries in the account books of the firm, and in that manner alone had stolen from the defendant, and in that sense alone was a thief, the words would not be actionable *per se*, and the complaint would be bad for lack of an averment of special damage: *Stern* v. *Katz*, 38 Wis.

SUBROGATION.

In what Cases it applies.—The doctrine of subrogation in equity is confined to the relation of principal and surety, and guarantors, and to cases where a person, to protect his own junior lien, is compelled to remove one which is superior, and to cases of insurers paying losses. In the first class named, the doctrine is applied to avoid a multiplicity of suits. In the second class, the person discharging the superior lien is

treated as its purchaser or assignee, unless the facts show it was intended as an absolute payment. In the last class, the insurer is subrogated to the remedies of the assured, upon the ground that upon payment he is entitled to the property insured as being abandoned by the assured: *Bishop* v. *O' Conner*, 69 Ill.

Trusts and Trustees.

Good Faith—Purchase by Trustee of Trust Property—Actual Fraud —Lapse of Time.—Though equity will enforce in the most rigid manner good faith on the part of a trustee, and vigilantly watch any acquisition by him in his individual character, of property which has ever been the subject of his trust, yet where he has sold the trust property to another, that sale having been judicially confirmed after opposition by the *cestui que trust*, the fact that thirteen years afterwards he bought the property from the person to whom he once sold it does not, of necessity, vitiate his purchase. The question in such a case becomes one of actual fraud. And where on a bill charging fraud, the answer denies it in the fullest manner, alleging a purchas *bonâ fide* and for full value paid, and that when he, the trustee, made the sale to the person from whom he has since bought it, the purchase by himself, now called in question, was not thought of either by himself or his vendee—the court will not decree the purchase fraudulent, the case being heard on the pleadings, and without any proofs taken: *Stephen* v. *Beale et ux.*, 22 Wall.

The complainants in this case, who alleged fraud and relied on the trustee's possession of the trust property after an alleged sale of it, as evidence of it, not stating *when* the trustee came into possession—that is to say, how soon after his former sale—the court assumed the time to be thirteen years; this term having elapsed between the date of the sale by the trustee and the filing of the bill (or cross-bill, rather) to set it aside; the court acting on the presumption that the complainant stated the case as favorably as he could for himself, and would have mentioned the fact that trustee had been in possession long before the bill was filed, if he had really been so: *Id.*

Right to claim Compensation.—Where a trustee claims compensation for services, he must show that he has discharged the trust; and if the agreement to pay him out of the fund is disputed, he must establish it by a preponderance of evidence: *Jenkins* v. *Doolittle*, 69 Ill.

ISAAC F. REDFIELD.

As we go to press we receive the announcement by telegraph of the death, at his residence in Charlestown, Mass., on March 23d, of Hon. Isaac F. Redfield, formerly Chief Justice of Vermont, and for the last fifteen years one of the editors of this journal. We shall present our readers a sketch of this distinguished jurist in a future number.